



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 19, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-1086

Dear Ms. Barloco :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178885.

Harris County (the "county") received a request for the complete personnel file for Robert Sezonov. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Employee W-4 forms are confidential under section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). Consequently, the county must withhold the submitted W-4 form under section 552.101 of the Government Code and section 6103(a) of title 26 of the United States Code.

We further note that the submitted information includes an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the submitted Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). This office has determined that some personal financial information is highly intimate or embarrassing and therefore meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We believe that some of the submitted information constitutes personal financial information. Further, we believe there is no legitimate public interest in this information. Accordingly, we have marked the information in the submitted documents that the county must withhold under section 552.101 in conjunction with common-law privacy.

We now address your argument that some of the information is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You state that the requestor has asked for the personnel records of an individual who, prior to the request, elected not to allow public disclosure of his home telephone number, home address, social security number, and whether he has family members in accordance with section 552.024 of the Government Code. Therefore, we have marked the information that must be withheld pursuant to this exception.

We also note that the submitted information contains Robert Sezonov's personal email address. Section 552.137 of the Government Code makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You do not inform us that Robert Sezonov has affirmatively consented to the release of any e-mail address contained in the submitted materials. The county must, therefore, withhold the e-mail address, which we have marked, under section 552.137.

Finally, Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the information in the submitted documents that the county must withhold pursuant to section 552.130.

To summarize, we conclude that: (1) the county must withhold the submitted W-4 form under section 552.101 of the Government Code and section 6103(a) of title 26 of the United States Code; (2) the submitted Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system; (3) we have marked the information in the submitted documents that the county must withhold under section 552.101 in conjunction with common-law privacy; (4) we have marked the information that the county must withhold under section 552.117 pursuant to section 552.024; (5) we have marked the personal email address the county must withhold pursuant to section 552.137; and (6) we have marked the information in the submitted documents that the county must withhold pursuant to section 552.130. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the


governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 178885

Enc: Submitted documents

c: Mr. Dan Rosenberg
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Houston, Texas 77587
(w/o enclosures)